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Court : Patna

Decided On : Feb-07-2006

Judge : Manohar Lal Visa, J.

Appellant : Laxmi Ram

Respondent : State of Bihar

Disposition : Appeal dismissed

Prior history : Manohar Lal Visa, J. 1. This Appeal is directed against the judgment and order both dated 18-4-1992 passed by Additional Sessions Judge X, Rohtas at Sasaram in Sessions Trial No. 158/29 of 1987 convicting and sentencing the appellant to undergo rigorous imprisonment for seven years under Section 304, Part II read with Section 14 of Indian Penal Code (in short 'I.P.C.') and to undergo rigorous imprisonment for six months under Section 323 read with Section 34 of I.P.C. Both the sentences have,

Judgement :

Manohar Lal Visa, J.

1. This Appeal is directed against the judgment and order both dated 18-4-1992 passed by Additional Sessions Judge X, Rohtas at Sasaram in Sessions Trial No. 158/29 of 1987 convicting and sentencing the appellant to undergo rigorous imprisonment for seven years under Section 304, Part II read with Section 14 of

Indian Penal Code (in short 'I.P.C.') and to undergo rigorous imprisonment for six months under Section 323 read with Section 34 of I.P.C. Both the sentences have, however, been ordered to run concurrently.

2. The case of prosecution, in short, is that a Lota was stolen from the house of informant Tejiya Devi (PW 2) by Lal Babu Ram, son of Somaru Ram. On 28-8-1996 at about 4 p.m. informant along with her deceased husband Sahdeo Ram was making enquiry from co-accused Somaru Ram and his wife in a lane in front of their house about stolen Lota when appellant and co-accused Somaru Ram both started assaulting Sahdeo Ram with lathis who, on receiving the injury, on his head fell down and, thereafter, appellant and Somaru Ram again assaulted him with lathis. When informant and her brother-in-law Sukhdeo Ram (PW 7) tried to rescue the deceased, they were also assaulted by appellant and Somaru Ram with lathis. Sukhdeo Ram received injuries on his right arm. Sahdeo Ram, after receiving injuries, became unconscious. The Fard-e-beyan (Exhibit-3) of informant was recorded on the same day at 19.45 hours at Sadar Hospital, Bhabua and a case under Sections 307, 323/34 of I.P.C. was registered by drawing a formal first information report (Exhibit-4) because by that time, Sahdeo Ram was living unconscious. Subsequently, Sahdeo Ram died and Section 302 of I.P.C. was added to the first information report. The police, after investigation, submitted chargesheet under Sections 302, 307, 323/34 of I.P.C. and cognizance of the case was taken and case was committed to the Court of Session where charges under Sections 302/34 of I.P.C. for committing murder of Sahdeo Ram and under Sections 323/34 of I.P.C. from voluntarily causing hurt to Sukhdeo Ram were framed against the appellant and co-accused Somaru Ram. After trial, appellant and co-accused Somaru Ram both were held guilty under Sections 304, Part II and 323/34 of I.P.C. and were convicted and sentenced as indicated above.

3. The case of defence, as it appears from the trend of cross-examination of prosecution witnesses, is that the deceased, while trying to take out a bucket from the well, fell down in the well, received injuries and died and they have been falsely implicated in this case on account of village politics.

4. Altogether ten witnesses on behalf of prosecution were examined. Tejiya Devi (PW 2) is the informant, Kula Ram (PW 1), Kariman Ram (PW 3), Tetari Devi (PW 6) and Sukhdeo Ram (PW 7) are said to be witnesses to occurrence. Dr. Shyam Sunder Singh (PW 8) is the doctor who held post mortem examination on the dead body of deceased Sahdeo Ram. Surajnath Ram Pandey (PW 9), who is the seizure list witness when blood-stained soil was seized by Investigating Officer from the place of occurrence, has not supported the case of prosecution and has been declared hostile. Suresh Prasad Singh (PW 10) is the Investigating Officer, Kastura Devi (PW 4) and Kaushalya Devi (PW 5) are tendered witnesses.

5. Tejiya Devi (PW 2), the informant, in her evidence, has said that at the time of occurrence, she and her husband, in a lane in front of the house of Ram Gahan Ram were making enquiry about their stolen lota from co-accused Somaru and his wife and in the meantime, Kariman Ram (PW 3) also came there and exchange of hot words started between Somaru Ram and Kariman Ram and when her husband tried to inter vene, co-accused Somaru Ram assaulted him on his head with lathi as a result of which he fell down and thereafter, appellant and Somaru Ram again assaulted him with lathis causing injuries on his back and both arms and when she went to rescue her husband, she was assaulted by Somaru Ram with lathi on her head and by appellant with lathi causing injury on her arm. She has further said that when Sukhdeo Ram (PW 7), her brother-in-law, tried to rescue her and her husband, he was assaulted by the appellant and Somaru Ram receiving Injuries on his head and arm. According to her, appellant and Somaru Ram after assault fled away and her husband became unconscious and occurrence was witnessed by Kariman, Mahadeo, Kula Ram and others and her husband was taken to Belau and subsequently her husband died in hospital because of assault on him by appellant and Somaru Ram. She has said that her Fard-e-bayan was recorded by police at hospital. She has denied the suggestion of defence that on the day of occurrence, her husband was trying to take out a bucket from a well and this statement was given by her before Investigating Officer. She has further denied the suggestion of defence that in taking out the bucket from the well, her husband fell in the well and thereafter, he died.

6. Kula Ram (PW 1), Kariman Ram (PW 3), Tetari Devi (PW 6) and Sukhdeo Ram (PW 7) have supported the case of prosecution and have said that appellant and co-accused Somaru Ram assaulted the deceased with lathis. Out of these witnesses. Sukhdeo Ram (PW 7), who is brother of deceased and brother-in-law of informant, is injured and has said that when he tried to rescue the informant and her husband, he was also assaulted by appellant and Somaru Ram with lathi. The rest witnesses have also supported the case of prosecution on the point of assault to informant and Sukhdeo Ram by appellant and co-accused Somaru Ram with lathi. Their evidence is consistent and I do not find any material contradiction in their evidence to disbelieve them.

7. Dr. Shyam Sunder Singh (PW 8). who is the doctor, in his evidence, has said that on 29-8-1986 when he was posted at Sub-Hospital, Bhabua at about 11 a.m. on that day, he held post mortem examination on the dead body of Sahdeo Ram and found following ante mortem injuries:

(1) Fracture of right forearm 4' x 3' x tenderness with swelling

(2) Swelling over both parietal region of skull 4' x 3'.

(3) Swelling on the left arm 3' x 2'.

(4) Another swelling on the back of chest 4'x3'.

He has further said that all aforesaid injuries were caused by hard and blunt substance which may be lathi and in his opinion, cause of death was due to shock and hemorrhage as a result of brain damage and time elapsed since death was within twelve hours. He has proved his post mortem examination report which is marked Exhibit 1.

8. Suresh Prasad Singh (PW 10) is the Investigating Officer. He has proved the Fard-e-bayan (Exhibit!) and formal first informal ion report (Exhibit-4) and has said that he visited the place of occurrence which is a lane in front of house, of Ram Gahan Chamar and he found blood-stains at the place of occurrence which he seized and prepared seizure list (Exhibit 5) in presence of independent witnesses. He has further said that on 30-8-1986, he went to Bhabua Sadar Hospital where

he recorded the statement of Sukhdeo Ram and because injured Sahdeo Ram had died in the hospital, therefore, he made a written prayer to the Court for adding Section 302 of I.P.C. in the first information report. He has also said that after completing investigation, he submitted chargesheet.

9. So far the question of death of deceased Sahdeo Ram is concerned, the prosecution, by adducing evidence of eye witnesses to the occurrence, has proved its case that appellant and co-accused Somaru Ram assaulted the deceased with lathis resulting in his death. This oral evidence is supported by medical evidence. So far injuries sustained by informant and Sukhdeo Ram (PW 7) at the hands of appellant and co-accused Somaru Ram with lathis are concerned, I find that charges under Sections 323/34 of I.P.C. have been framed against the appellant and Somaru Ram for voluntarily causing hurt to Sukhdeo Ram only and not for causing injuries to informant. As stated above, Sukhdeo Ram, who is said to have received injuries from appellant and co-accused Somaru Ram with lathis has, in his evidence, stated this fact and other witnesses including informant have supported him. The appellant has been convicted, besides under Sections 302/34 of I.P.C. under Sections 323/34 of I.P.C. In view of this matter, if the doctor who is said to have examined the injuries of Sukhdeo Ram has not been examined, it will not adversely affect the case of prosecution on the point of assault to Sukhdeo Ram by appellant and co-accused Somaru Ram because of non-examination of doctor particularly when Sukhdeo Ram is injured himself and other witnesses to the occurrence have supported this part of prosecution case and their evidence is free from any doubt.

10. From the judgment of Court below, I find that although charge under Sections 302/34 of I.P.C. for committing the murder of Sahdeo Ram has been framed against the appellant and Somaru Ram but then the Court below was of the opinion that prosecution has failed to establish that accused persons assaulted the deceased with an intention to cause his death. It further considered that there was no animosity from before and nature of weapon used was lathi and occurrence took place in the heat of passion on the spur of moment and accused persons had not come to place of occurrence for causing the death of deceased. It further observed that undoubtedly the common intention of appellant and co-accused

Somaru was to cause simple or grievous hurt to deceased but the hurt resulted in his death and in this regard, there was simultaneous meeting of mind of both the accused persons as both of them actively participated in their criminal act. On the point of fact which came in evidence that the first, lathi was given by co-accused Somaru Ram at the head of deceased, the Court below considered the evidence of doctor who, in his evidence, has said that injury No. 2 which was found on head might have been caused by more than one hit and because appellant and co-accused Somaru Ram both gave repeated blows to deceased with common intention, the Court below held appellant and Somaru both responsible for the total effect which they produced with their knowledge that their action was likely to cause death. On the grounds discussed above, the Court below held the appellant and co-accused Somaru Ram guilty under Section 304, Part II read with Section 34 of I.P.C. instead of Section 302 of I.P.C. I fully agree with this finding also.

11. In the result, this appeal is dismissed and the judgment and order of Court below are confirmed.

12. As the appellant is on bail, his bail bonds are cancelled and he is directed to surrender before the Court below to serve the sentence passed by the Court below.

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